

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7207 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and  
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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N K OIL MILLS LTD

Versus

AHMEDABAD MUNICIPAL CORPORATION

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Appearance:

MR PV NANAVATI for Petitioners  
No one appears on behalf of respondent.

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CORAM : MR.JUSTICE M.R.CALLA and  
MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/98

ORAL JUDGEMENT

1. The dispute raised in this Special Civil Application relates to the dues against the property tax in respect of the property, which earlier belonged to Nirma Chemical Works Pvt. Ltd. and Patel Specific Family Trust. Their rights as owners in the said property were sold out by conveyance deed dated 31.12.92

and 19.1.93 in favour of the present petitioners and on the basis of which the petitioners herein became absolute owners of the property in question from 31.12.92 and 19.1.93. The copies of the indices showing registration of the said documents on 31.12.92 and 19.1.93 have been placed on record. It is alleged that the petitioner No.1 has become the owner of tenement No.00173/701+702 of Ellisbridge 1/A TPS No.3, F.P.No.173, Ahmedabad. It is also stated in the petition that the information had accordingly been given to the respondent - Corporation with regard to the acquiring of the ownership, as above, by the petitioners. The petitioners have also come with the case that for the years 1985-86 to 1991-92 a sum of Rs.1,10,810/- had already been paid to the Corporation by predecessor in title on different dates between 31.3.86 and 25.9.91, as has been stated in para 5 of the Special Civil Application. It is also the case of the petitioners that a special Notice dated 16.12.93 had been given by the respondent Corporation and against this special notice objections had been filed vide letter dated 21.12.93. While the petitioner No.1 is in occupation of the property in question as owner and the Nirma Chemical Works Pvt. Ltd. and Patel Specific Family Trust have nothing to do with this property after 31.12.92 and 19.1.93 as stated above, the objections dated 21.12.93, which had been filed by the petitioners, were disposed of on 17.2.94 without taking into consideration the order which has been passed by the Small Causes Court No.7 at Ahmedabad in MVA No.12887 of 1992 filed by the Nirma Chemicals Works Ltd. and the Small Causes Court vide its judgment and order dated 1-3/11-93 had fixed the GRV of the premises S.No.00173/701+702 of Ward Ellisbridge A/1 at Rs.18,332/- for the year 1992-93 as against the Gross Rateable Value (GRV) which had been fixed by the Corporation at the rate of Rs.2,55,600/-. The grievance is that the Corporation while disposing of the objections on 17.2.94 did not consider the GRV fixed by the Small Causes Court in respect of the same property and instead of fixing the same for the subsequent years at the rate fixed by the Small Causes Court, the Corporation has fixed it at Rs.1,40,580/- for the year 1994-95 as against what was categorically fixed at Rs.18,332/- for the year 1992-93 by the Small Causes Court. A further grievance has been raised that no bill has been issued for the year 1993-94 and without issuing any bill for the year 1993-94 straightaway bill Annexure 'C' has been issued for the period April 1995 to March 1996 while the Appeal against the GRV fixed for 1994-95 at the rate of Rs.1,40,380/- is pending before the Small Causes Court. Annexure 'C' appears to have been issued on 22.6.95 whereby a sum of

Rs.10,78,369.91 Ps. has been stated to be the arrears and the total bill is for a sum of Rs.11,77,057/-. This bill Annexure 'C' has been challenged and the same has been sought to be quashed.

2. In this matter, Special Civil Application was filed on 22.8.95 and notice was issued on 12.10.95. After the notice, Rule was issued on 17.1.96 and the matter was fixed for final hearing in the week commencing on 21.1.96. We find from the record that no reply as such has been filed and all that has been stated on behalf of Ahmedabad Municipal Corporation in the affidavit dated 20.12.95, without disputing the facts alleged by the petitioners, is that the petition be rejected on the ground of alternative remedy with reference to the Supreme Court judgment in the case of Shyam Kishore v. Municipal Corporation of Delhi, reported in AIR 1992 SC 2279.

3. So far as the objection as contained in this affidavit dated 20.12.95 is concerned, it is with reference to the availability of the alternative remedy of filing an Appeal. However, we find that in the instant case, the Appeal of the petitioner is already pending before the Small Causes Court with regard to the fixation of the rateable value for the year 1993-94 and we further find that the Small Causes Court while passing the order dated 1-3/11/93 has categorically issued a direction against the respondent Corporation to give effect to the judgment of the Small Causes Court within three months and amend the entries in the Assessment Register not only for the concerned official year, but also for all the subsequent years thereto and to follow the same till the provisions of Rule 15 can be made applicable. Besides this, it has been pointed out by Mr. Nanavati that in order to seek adjudication and the ultimate result of the Appeal, it is necessary to deposit the due amount and, therefore, in the facts of this case, the alternative remedy cannot be said to be adequate and equally efficacious remedy. In such a situation, coupled with the facts, as aforesaid, we do not find that this Special Civil Application should be rejected and thrown out on the ground of alternative remedy, as has been sought in the affidavit dated 20.12.95.

4. So far as the merits of the case are concerned, it is clear that the Appeal against the rateable value fixed at Rs.1,40,580/- is pending for the year 1994-95 and during the pendency of this Appeal without issuing the bill for the year 1993-94 and without taking into consideration the Small Causes Court's order dated

1-3/11/93 bill at Annexure 'C' for the period upto March 1996 had been issued so as to recover the arrears as also the tax dues for the year 1995-96 on the basis of the rateable value fixed by the Corporation at Rs.1,40,580/-, which is a subject matter of Appeal and which is contrary to the earlier order dated 1-3/11/93 passed by the Small Causes Court. This Bill Annexure 'C' therefore cannot be said to have been issued in accordance with Rules and the same is hereby quashed and set aside and it is directed that till the pending Appeal against the fixation of rateable value at the rate of Rs.1,40,580/- fixed by the Corporation is decided, the petitioners shall go on depositing the amount of tax at the rate as was fixed by the Small Causes Court while passing the order dated 1-3/11/93. If any arrears are due for any of the years, the amount calculated in terms of the Small Causes Court's order dated 1-3/11/93 shall be deposited within a period of two months from today but the Bill Annexure 'C' shall not be acted upon and enforced against the petitioners till the disposal of the pending Appeal before the Small Causes Court. Fresh bill shall be issued subject to the decision of the pending Appeal before the Small Causes Court and the ultimate rights and obligations of the parties in the matter of payment of this property tax for the period in question shall be governed by the decision, which may be rendered by the Small Causes Court in the pending Appeal.

5. This Special Civil Application succeeds as above and the Rule is made absolute in the terms as aforesaid. No order as to costs.